

Testimony of

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Thank you, Mr. Chairman, Senator Grassley and members of the Committee, for the opportunity to appear before the Committee today.

I am Bill McDonald, Co-Executive Director of the Malpai Borderlands Group (MBG). The Malpai Borderlands Group is a grassroots, landowner-driven nonprofit organization attempting to implement ecosystem management on nearly one million acres of virtually unfragmented open-space landscape in southeastern Arizona and southwestern New Mexico. Our goal is "...to restore and maintain the natural processes that create and protect a healthy, unfragmented landscape to support a diverse, flourishing community of human, plant and animal life in our borderlands region. Together, we will accomplish this by working to encourage profitable ranching and other traditional livelihoods which will sustain the open space nature of our land for generations to come."

The Malpai Borderlands

The Malpai Borderlands area includes the San Bernardino Valley, the Peloncillo Mountains, the Animas Valley and the Animas Mountains. It is roughly pyramid-shaped, with the base of the pyramid running just east of Douglas, Arizona to the

far eastern boundary of the 500-square mile Gray Ranch in New Mexico. The apex is just south of Rodeo, New Mexico, on the Arizona-New Mexico state line, and runs to the Mexico border.

With elevations ranging from 3500 to 8500 feet, this diverse area of mountains, canyons, valleys and riparian corridors. Several rare, threatened and endangered plant and animal species are found here. It is the only place in the U.S. where Gould's turkey and white-sided jackrabbits occur naturally. It is also home to popular big-game species such as Coues deer, mule deer, pronghorn and Desert Bighorn sheep.

Perhaps the most remarkable feature of this huge landscape is that fewer than 100 human families reside on it. Many of the families who live there have been there for generations. Except for two small wildlife preserves, this is cattle ranching country.

In 1990 several area ranchers met at the Malpai Ranch in the San Bernardino Valley to discuss what we saw as a deteriorating situation. We were concerned about the resource we depend upon for our livelihoods and way of life -- the diminishing quality of grassland for grazing. Fragmentation of the landscape, beginning with the subdivision of some ranches on the fringe of our area, was also a looming threat. The inevitable result of the free market would seem to be 20-acre ranchettes. In 1994 we formed a nonprofit to bring ranchers and scientists together with partners including local counties, state land departments, federal land managing agencies, the Natural Resources Conservation Service, soil and water conservation districts, game and fish departments, the Desert Laboratory of the University of Arizona, The Nature Conservancy, the Animas Foundation and the University of New Mexico. The Malpai Borderlands Group now carries out a series of conservation programs and activities, including land restoration; endangered species habitat protection; cost-sharing range and ranch improvements; and land conservation projects.

I'd like to think that our private, citizen-based efforts at open-space preservation, support for a sustainable ranching way of life, and endangered species habitat protection are beginning to show good results. An encouraging sign of the health of our wildlife habitat was the recent sighting of a Mexican jaguar in the Peloncillo Mountains.

Conservation Transactions

Beginning in 1994 we have been involved in seven different land conservation transactions involving conservation easements totaling approximately 35,000 acres. The Finance Committee is no doubt familiar with provisions in the federal tax code that encourage the donation of easements to groups such as the MBG, which is qualified to accept such donations. However, the financial circumstances of typical ranchland owners often mean that they cannot afford to give easements away for tax benefits since they have little income to shelter. This is why Malpai Borderlands Group has had to pay for the land use easements in one of two ways.

First, we have purchased three of these easements outright for cash, with the purchase price agreed to by the MBG and the landowner and based on the appraisal of the current development value of the particular ranch. In those projects we were fortunate to have raised funds as charitable contributions to pay for those projects. Second, we acquired the other four easements by trading grazing rights for the easements, under our GRASSBANK™ program. MBG raised private funds to pay the owners of a nearby ranch that had a supply of grass. The grass was used by the cattle of the ranchers who were willing to convey easements on their property to the MBG. The amount of grazing permitting was determined by the value of the easement conveyed, based on an appraisal of development value at the time of conveyance.

Each of these easements is individually crafted to meet the needs of the landowner and conservation goals of the MBG, which are primarily to prohibit subdivision, but often to encourage or prohibit certain activities affecting the health of the landscape. In the case of the GRASSBANK™ program, all of these easements contain an escape clause should government grazing policies make the goals of the easement unattainable. Thus, ranchers who can't continue ranching as a livelihood because of changed regulations of the industry would not be further penalized with loss of other economic use of their land.

Our experience with conservation easements is that they are useful for keeping land in compatible ranching use and for protecting land from habitat fragmentation and subdivision. However, they could be even more useful if we could provide a benefit to landowners who sell easements for conservation by reducing the capital gains tax on the sales. This would provide landowners with a higher net return for protecting their land.

Tax changes recommended by the Malpai Borderlands Group

We believe that there are a number of tax Code changes that could enhance our conservation work.

First, we must remember that while farm and ranch land has generally appreciated greatly in value in recent years, income from farming and ranching is still relatively modest. Therefore, tax incentives to encourage landowners to protect their land must recognize that most farmers and ranchers are not able to take advantage of the charitable tax benefits for income that are currently available to other types of taxpayers. The financial benefit is simply not there because the landowner's annual income and tax liability is relatively low.

At the same time, because of the great appreciation in land values, the landowner faces a large capital gains tax on any sale that would reduce the net return to the landowner. In the case of the families in the Malpai Borderlands area, much of the land has been held by for several generations and has a low or no "basis" and a potential for particularly steep tax upon sale. Since the farm or ranch is often the only financial "nest egg" held by such owners, any reduction in the net after tax return from a sale will have a significant adverse impact on and often creates a barrier for the landowner to consider a disposition of his property.

For that reason, our primary and strongest recommendation is that Congress reduce the Federal tax burden on the sale of land, easements or other partial interests in land where the sale serves a conservation purpose. This is a proposal that would be most effective in the Malpai region and would help many landowners who are typically "land-rich, cash poor." This proposal would also help conservation groups such as MBG stretch their limited resources further when purchasing a conservation easement. In fact, I understand President George W. Bush has included just such a proposal in his Budget Blueprint for FY 2002 and that this proposal grows out of legislation introduced in the last Congress by Senator Roth and others on the Senate Finance Committee as part of the Community Renewal tax bill (S. 3152). We strongly and respectfully urge Congress to enact such legislation to foster conservation efforts by private landowners.

As a secondary alternative, Congress should consider ways to make the gift of land or an easement for conservation purposes more valuable for tax purposes. Congress might, for example, as Senator Baucus has suggested, make the charitable contribution of land or an easement deductible up to a higher amount than would ordinarily be the case for other contributions. Senator Baucus' bill

allows such contributions to be exempt from current adjusted gross income limitations and to be carried over for an unlimited period in order to use up all of the charitable contribution value for tax purposes. His bill also provides for special charitable contribution benefits for farmers and ranchers by allowing them to deduct gifts up to 100% of their adjusted gross income. We believe that it is entirely appropriate for Congress to provide these special rules for conservation-related charitable gifts. Land is an extraordinary capital asset and, once lost to an incompatible use, its conservation value may be gone forever. We hope that Congress will consider favorably Senator Baucus' bill.

Finally, based on the Malpai Group's experience with its GRASSBANK™ program, there are some tax code changes that we would recommend to clarify some of the issues we face with those transactions. First, incentives should be enacted to encourage landowners who have surplus grass available for cattle grazing and who are in an appropriate financial position to consider a charitable contribution. It would be helpful for Congress to enact a tax rule allowing such landowners to donate the grass at its fair market value to a GRASSBANK™ program and to obtain the financial benefit of the charitable contribution income tax deduction. Currently, such a donation is hampered by the uncertainty associated with the rules applying to and valuing such an unusual gift. Second, we want to make sure that, when the Malpai exchanges the right to have cattle graze on the grass it obtains in its GRASSBANK™ program for the conservation rights in the ranchers' land, there is no tax due on such a trade and that such exchanges qualify as like kind exchanges under the tax Code. If Congress were to enact clarifying legislation on these issues, the effectiveness of the GRASSBANK™ program would be greatly enhanced.

Conclusion

On behalf of the Board of Directors of the Malpai Borderlands Group and myself, as well as the numerous private ranchers with whom we work, I want to express my appreciation to the Committee and to Chairman Baucus and Senator Grassley for holding this hearing and inviting me to share with you the Malpai Borderlands experience. While we have made great strides in the conservation of this wonderful landscape, much more remains to be done; it is only with your help that we can hope to be successful. Thank you for the opportunity to present this testimony.